IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1648 OF 2003
IN
SUIT NO.3040 OF 2001

Centurian Bank Ltd. ...Plaintiffs
Vs.
Datar Switchgear Ltd. & Ors. ...Defendants
And
M.S.E.Board ...Applicants

Mr.Jaydeep Mitra i/b. M/s.Wadia Ghandy & Co. for Plaintiffs
Mr. Cherag Balsara i/b. S.Satpute & Co. for Defendant Nos.1 & 2.
Mr. Gaurav Joshi i/b. M/s. Little & Co. for Defendant No.3

CORAM: SMT.R.S.DALVI,J.
DATED: 9TH AUGUST, 2005

P.C.

1. This Notice of Motion is taken out to set aside the order passed on a Chamber Summons taken out by Defendant No.1 upon the Plaintiff pursuant to certain directions of the Court Receiver passed for executing the order of taking possession of the suit equipments/panels.

2. The Plaintiffs have leased certain equipments to Defendant No.1 under certain agreements between them. These equipments are installed on the electric network of Defendant No.3 (the MSEB) at various places in certain Districts of Maharashtra.The Defendants 1 & 2 have defaulted under the lease agreements.

3. The suit came to be filed on 14th August, 2001 for termination of the lease agreement between the Plaintiffs and the Defendant No.1 (Defendant No.2 being the guarantor) and for consequential reliefs of recovery of the various amounts under the lease agreement aggregating to Rs.10.86 crores.

4. Court Receiver came to be appointed by an order dated 20th September, 2001. Defendant Nos.1 and 2 were not interested for being agents of the Receiver. The Receiver was directed to take actual possession of the equipments after getting the same identified. The parties were directed to co-operate with the Receiver in identifying the properties.

5. On 18th July, 2002 the Advocates for Defendant No.1 informed the Court Receiver under their letter of that date that the work of to removing the panels on which the equipments were placed was required to be carried out by a duly authorised and licensed electrician under the Electricity Regulation Act. They stated that since Defendant No.1 was a sick industrial company and had skeletal staff and did not employ any licensed electricians, the Defendant No.1 would not be able to provide any workmen to remove the equipments for handing over the same to the Court Receiver. They further stated in that letter that only MSEB linesmen are fully equipped, trained and

authorised to undertake such work.

6. The Court Receiver directed the Plaintiffs to obtain appropriate orders for executing the work of taking possession of the equipments from the supply network of Defendant No.3.

7. The Plaintiffs filed a precipe for speaking to the Minutes of the order dated 20th September, 2001. The Plaintiffs sought further orders against Defendant No.1 to deploy qualified manpower for the purpose of taking possession of the suit equipments for which the Court Receiver was appointed.

8. On 6th September, 2002 that application came to be rejected as it did not fall under the perview of speaking to the minutes. The parties were directed to move before appropriate Court. No other application before any Court by way of any Notice of Motion or otherwise has been taken out by the Plaintiffs since. Consequently no order came to be passed against Defendant No.1 for deploying any qualified manpower for that purpose.

9. On 27th September, 2002 the Advocates for Defendant NO.2 again informed the Court Receiver of his inability to appoint any licensed electrician for removing the equipments from the supply network, Defendant No.3.

10. In the meeting held on 27th Septemeber, 2002 the Court Receiver passed certain directions after hearing all the parties to the suit for taking possession of the suit equipments as per the order dated 20th September, 2001. The minutes of the Court Receiver show that Defendants 1 and 2 were ready to co-operate with the Court Receiver to identify the suit equipments. Defendant No.3 would only make arrangements to shut-down the electricity supply at the time of removal of the equipments from their network upon sufficient notice being given to them at various places where the equipments were installed. The licence holder was required to remove the equipments to handover to the Court Receiver. The Court Receiver directed Defendants 1 and 2 to make alternative arrangement for such a person.

11. Defendant No.2 claimed that they could not make any such arrangement. Consequently they took out a Chamber Summons which was directed only against the Plaintiffs.

12. The Chamber Summons was to set aside the directions issued by the Court Receiver on 27th September 2002 and for other incidental reliefs. The Chamber Summons was not directed against Defendant No.3 (though the Plaintiffs have served the copy of Chamber Summons upon the Defendant No.3 also). Hence

Defendant NO.3 did not appear to show cause against the Chamber Summons.

13. An order came to be passed by Justice Kakade on 27th January 2003 directing the Court Receiver to take assistance of Defendant No.3 to remove the equipments after shutting down the power supply through their linesmen who are fully qualified to do that job. The order further directed Defendant No.1 to assist and co-operate actively. The Receiver was accordingly directed to comply with the order dated 20th September 2001 and Defendant No.1 was directed to bear the costs of the removal of the property.

14. The Defendant No.3 have taken out this Notice of Motion to set aside the order passed from the Chamber Summons in their absence. They contend that in the suit of the Plaintiffs, the Plaintiffs must bear the costs, charges and expenses of the appointment of the Court Receiver sought by them. In this unique case it includes the costs, charges and expenses for removing the equipments from the electric network. Defendant No.1 being a sick industrial undertaking, and who are in any case defaulters pursuant to which this suit is filed, cannot even be relied upon later to pay the costs of the removal effected by the linesmen of Defendant No.3. Defendant NO.3 have further contended that the removal of the equipments from the supply network would require

additional human labour to manually remove the equipments which Defendant No.3 cannot and need not provide. Besides, these equipments are kept in various Districts at various places where different linesmen of Defendant No.3 are given job responsibilities. Hence, it would entail the cumbersome process of making up appointments with different linesmen and requiring different persons to remove the equipments at different times. Instead, if the Plaintiffs initially at their costs, appoint their own workers to remove the equipments they could be taken from place to place by the Plaintiffs at their convenience with only notice to linesmen of Defendant No.3 to shut the power supply which they alone can do and are willing to do.

15. It is accordingly seen that the order passed in the absence of Defendant No.3 involving Defendant No.3 is not workable. Defendant No.3 were the most relevant party upon whom the Chamber Summons should have been taken out. The Chamber Summons has not been taken out against them. The order on the Chamber Summons is passed in their absence and without hearing them. Hence the application for setting aside the order lies under the provisions of Order IX Rule 13 read with S. 141 of the C.P.C.

16. In fact it would be wise and sagacious for the Plaintiffs to arrive at a workable, amicable

arrangement with the linesmen of MSEB to remove the equipments by persons appointed by them since the order of Court Receiver has been obtained by them. Though the Court suggested a workable solution, the Plaintiffs in their discretion refused to work it out. It was contended on their behalf that the action of Defendant No.3 is in collusion with Defendant No.1 since both Defendant No.1 as the Lessee of equipments and Defendant No.3 as the sub-lessees desire to set at naught the order of the Court Receiver passed infavour of the Plaintiffs and that they must both put in their bit to render co-operation for removing the equipments.

17. It may be mentioned that since the Plaintiffs have spurned any suggestion for an amicable work-out, the order in the Chamber Summons is required to be passed strictly as per law.

18. Under the circumstances the Defendant No.3 cannot be ordered to carry out the directions passed against them in the order dated 27th January 2003 and that order to that extent must be set aside. However, the order dated 27th January 2003 as against Defendant NO.1 as well as the Plaintiffs must stand. It is for the Plaintiffs to see how the order of appointment of Court Receiver is executed.

. Order accordingly. NOC.

(SMT.R.S.DALVI,J.)